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In the High Court of Judicature at Madras

Dated:10.04.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No.83 of 2006

Kannammal .. Petitioner

vs.

1. The State of Tamil Nadu
   rep. by Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai 9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 8. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus, calling for the records of the second Respondent herein pertaining to the detention order made in Memo No.421/BDFGISV/2005, dt. 23.08.2005 and quash the same and direct the Respondents to produce the body of the detenue (Viz) Velu S/o. Sundaram now detained in Central Prison, Chennai before this Court and set the detenue at liberty forthwith as stated therein.

For petitioner : Mr. S. Sairaman
For respondents : Mr. Abudukumar Rajarathinam
Govt. Advocate (Crl.side)

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name Kannammal, challenges the impugned order of detention dated 23.08.2005, detaining her son as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

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2. Heard both sides.

3. At the foremost, learned counsel for the petitioner submitted that there is delay in disposal of the representation of the detenu. With respect to the same, the particulars furnished by the learned Government Advocate show that the representation was received by the Government on 23.09.2005; remarks called for on 26.09.2005; remarks received on 05.10.2005; file submitted on 06.10.2005 and the same was dealt with by the Under Secretary and Deputy Secretary on the same day. The Minister for Prohibition and Excise passed an order on 07.10.2005; rejection letter was prepared on 17.10.2005; rejection letter sent to the detenu on the same day i.e., on 17.10.2005 and served to the detenu on 18.10.2005. Though the representation was considered and orders was passed by the Minister on 07.10.2005, it is contended that there is no reason to take time till 17.10.2005 for preparation of the rejection letter. As rightly pointed out by the learned Government Advocate, 8th, 9th, 11th, 12th, 15th and 16th of October, 2005 were holidays. If we exclude the above mentioned intervening holidays, we are of the view that there was no undue delay at every stage. Accordingly, we reject the said contention.

4. By drawing our attention to para 4 of the grounds of detention, learned counsel for the petitioner submitted that inasmuch as the detenu was arrested even in respect of other two cases apart from the ground case and of the fact that he has not moved bail application in any of those cases, the awareness relating to imminent possibility and coming out on bail in those cases has not been taken note of by the detaining authority and the detention order is liable to be interfered with. We verified para 4 of the grounds of detention. As rightly pointed out by the learned Government Advocate, the detaining authority has shown awareness in respect of the fact that the detenu was remanded in Crime Nos.1054/2005, 1092/2005 and 1115/05 on the file of S.11 Tambaram Police Station and also noted that he has not moved any bail application so far. Inasmuch as awareness was their in respect of ground case as well as 5th and 6th adverse cases and of the fact that he was remanded in respect of the above mentioned crimes, the conclusion arrived at by the detaining authority cannot be faulted with. Accordingly, we reject the said contention.

5. Next contended that the detention order was not intimated to any of the family members of the detenu. For this, learned Government Advocate has produced the file, which shows that mother of the detenu , by name, Kannammal was intimated on 24.08.2005 i.e., on the next day regarding the passing of detention order. Her acknowledgment was attested by two witnesses. Accordingly, we reject the said contention.

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6. Learned counsel for the petitioner after taking us through page 109 of the paper book contended that there is a defect in the translation. In the light of the said contention, we verified the English and Tamil translated version. We are satisfied that there is no defect as pointed out.

7. Learned counsel for the petitioner next contended that the post-mortem certificate, which is available at page 58 of the paper book is not legible and clean copy has not been furnished. For this, learned Government Advocate pointed out that the said certificate relates to first adverse case and secondly the first adverse case is at the trial stage, since charge sheet has already been filed. Even otherwise, he contended that the document available at page 58 is neither relied on or referred to by the detaining authority. In such circumstances, we reject the said contention also.

8. Finally, counsel for the petitioner submitted that arrest report and arrest memo did not contain the Crime No.1115 of 2005 and there is no such report or memo in respect of the other two crime numbers. According to the learned counsel, in the absence of the same, the detention order is liable to be interfered with. We are unable to accept the said contention, because the detenu was arrested only in respect of Crime No.1115 of 2005, which relates to ground case and thereafter, on the basis of his confession statement, in the 5th and 6th adverse cases he was arrayed as an accused. On going through the entire confession statement of the detenu, other connected documents, such as, remand order of the learned Magistrate and the narration of facts as well as the ultimate conclusion arrived at by the detaining authority in the grounds of detention, we are unable to accept the said contention also.

In the light of what is stated above, we do not find any valid ground for interference. Accordingly, this petition is dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
   Prohibition and Excise Department
   Fort St. George, Chennai 9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 8.

3. The Superintendent, Central Prison, Chennai.
   (In duplicate for communication to detenu)

4. The Joint Secretary to Government,
   Public (Law and order)
   Fort St George, Chennai 1.

5. The Public Prosecutor, High Court, Madras

+ 1 cc to Mr. Sairaman, Advocate SR No.18116

JE(CO)
SR/24.4.2006

Order in
H.C.P.No.83 of 2006

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